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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-193116

DATE: January 30, 1979

MATTER OF: Roderick Construction

DIGEST:

[Bid which did not include bid bond was properly rejected] despite bidder's assertion, supported by employees' affidavits, that bond was included with its bid package and was in Government's hands prior to bid opening. In absence of independent evidence to establish validity of bidder's assertion, bid may not be considered responsive.

Roderick Construction protests the award by the Forest Service to a firm other than itself under invitation for bids No. R5-11-78-32. When the Forest Service opened the low Roderick bid at bid opening no bid bond was allegedly found with the bid. Consequently, the Forest Service rejected the Roderick bid as nonresponsive and made award to the next low bidder. That contract has now been completed.

Roderick has submitted a copy of the bid bond it allegedly submitted with its bid and affidavits from its employees and owners to the effect that they witnessed the placing of the bid bond in the bid envelope before the latter was sealed. Consequently, it is felt that employees of the Forest Service are at fault for any failure of the bid bond to be with the bid at bid opening. Forest Service employees have submitted statements that the bid envelope was accepted, placed in the bid box, and when opened contained the bid but no bid bond. Thus, it is the conclusion of the Forest Service that no bid bond was included in the bid envelope.

We note that the furnishing of a bid bond is a material requirement that cannot be waived and that a failure to properly submit one prior to bid opening renders a bid non-responsive. Engineering Service Systems, Inc., B-192319, July 19, 1978, 78-2 CPD 53.

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In a case on point, we held that a bid which did not include the bid bond was properly rejected despite the bidder's assertion, supported by affidavits of its employees, that the bond was included in its bid package and was in the Government's hands prior to bid opening. P. W. Parker, Inc., B-190286, January 6, 1978, 78-1 CPD 12. In that case we noted that in the absence of evidence independent of that provided by the bidder to establish that the bond was submitted to the Government prior to bid opening, the bid may not be considered responsive. There is no such evidence presented here.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States